

Docket No.: M060
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Charles A. McBrian et al.

Application No.: 10/688,062

Confirmation No.: 8145

Filed: October 17, 2003

Art Unit: 2145

For: LIVE-SERVER CONTENT STAGING

Examiner: J.R. Swearingen

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant requests review of the rejections presented in the Final Office Action (mailed February 25, 2008) and maintained in the Advisory Action (mailed April 11, 2008) for the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. The review is requested for the reason(s) stated below.

REASONS FOR REQUESTED PRE-APPEAL BRIEF REVIEW

Claims 1-20 are pending in the present application. Claims 1-20 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,792,454 to Nakano et al. (hereinafter “*Nakano*”). Applicant respectfully submits that the outstanding claim rejections are improper, and thus requests pre-appeal review of the rejected claims in light of the remarks presented herein.

REMARKS

Claims 1-20 are rejected under 35 U.S.C. §102(e) as being anticipated by *Nakano*. To anticipate a claim under 35 U.S.C. § 102, a single reference must teach every element of the claim, *see* M.P.E.P. § 2131. Applicant respectfully submits that claims 1-20 are not anticipated by *Nakano* because *Nakano* fails to teach each and every element of the claims, as discussed further below.

First, regarding independent claim 1, it recites:

A method for staging file assets on a live server comprising:
detecting an index page of said server;
creating a staging folder within a file system of said server, wherein said staging folder does not default to a directory listing of said file system when accessed;
inserting a randomized string into a name of said file assets to be staged;
and
storing said file assets in said staging folder. (Emphasis added).

Nakano fails to teach at least the above-emphasized elements of claim 1. First, *Nakano* does not teach a method for staging file assets “on a live server”, but instead teaches a staging area that is implemented on a development server 130 as opposed to its live “website production server” 170, *see* Fig. 1 of *Nakano* and *see* col. 5, lines 5-23 of *Nakano*. As can be seen above, the preamble of claim 1 refers to staging file assets on a live server, and the body of the claim refers back to “said server”, thus referring to the live server. The present application clearly describes at, for example, paragraphs 0016-0017 in connection with its description of FIGURES 1-2, that the staging of file assets is performed on the live server. Indeed, FIGURE 1 is described in paragraph 0016 as illustrating a traditional technique similar to that of *Nakano* in which a staging web server 104 (such as *Nakano*’s development server 130) is used for containing new and developing web content, while a separate live web server 103 (such as *Nakano*’s server 170) is used for hosting the live web content that is accessible to public users 101 and 102. On the other hand, paragraph 0017 describes FIGURE 2 in which a separate staging server is not required, but instead the staging of file asserts occurs on the live web server. *Nakano* fails to teach any such method for staging file assets on a live server, but (like the

example of FIGURE 1 of the present application) merely teaches staging file assets that are under development at a separate development server 130.

The Advisory Action explains that the element “on a live server” has not been given patentable weight because the recitation occurs in the preamble, *see* page 2 of the Advisory Action. However, as for claim 1, the preamble should be given patentable weight. “If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is ‘necessary to give life, meaning, and vitality’ to the claim, then the claim preamble should be construed as if in the balance of the claim.” *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999), as cited by M.P.E.P. §2111.02. The preamble of claim 1 is necessary to give life, meaning, and vitality to the claim, and therefore it is improper for the Examiner to ignore its patentable weight. For instance, the preamble of claim 1 recites “A method for staging file assets on a live server”. Thus, the preamble clearly recites a limitation of the claim with respect to where the file assets are being staged in the claimed method. Further, the body of claim 1 refers to the “live server” recited in the preamble, and thus the preamble establishes antecedent basis for this term for use later in the claim body. For instance, the first element in the body of claim 1 recites “detecting an index page of said server”, thus referring to the “live server” in the preamble of claim 1. Ignoring the recitation of “live server” in the preamble would result in a lack of antecedent basis for the “said server” recited in this first element of the claim body.

Because the preamble of claim 1 is necessary to give life, meaning, and vitality to claim 1, the recitation that the staging of file assets occurs “on a live server” should be given patentable weight. For the reasons discussed above, when this term of claim 1 is properly given patentable weight, the claim is not anticipated by *Nakano* because *Nakano* fails to teach staging assets on its live server (such as *Nakano*’s server 170) but instead stages assets on its development server 130.

Second, *Nakano* does not teach creating a staging folder within a file system of “said server” (i.e., the live server), but instead teaches its staging area as being implemented on the separate development server 130.

Additionally, *Nakano* fails to teach a staging folder that does not default to a directory listing of said file system when accessed. Instead, *Nakano* teaches that its staging space is a branch that would appear to be listed as part of the directory listing of the development server's file system. Indeed, *Nakano* mentions throughout its disclosure that the staging area (as well as the other "areas") of its file system may be included as branches of a directory tree, *see e.g.*, col. 2, lines 58-64; col. 5, lines 39-56; and col. 6, lines 30-32, 45-47, and 59-64. Thus, it appears that nothing in *Nakano* would prevent its staging area from defaulting to a directory listing of the file system. Instead, any such directory listing of the file system in *Nakano* could include its staging area(s).

The Advisory Action asserts that "the development server [of *Nakano*] is coupled to a production server, which can be read as the default directory listing and the entire production server as the staging folder/area", citing to col. 5, lines 15-23 of *Nakano*. This asserted reading of *Nakano* makes no sense. Applicant fails to see how either the development server or the production server can be read as a default directory listing. The servers are not directory listings of any type, but are instead separate server devices (i.e., separate computers). The attempt to read *Nakano*'s system on claim 1 is thus so strained that its reasoning is nonsensical. Claim 1 recites "creating a staging folder within a file system of said server, wherein said staging folder does not default to a directory listing of said file system when accessed". No such staging folder is created by *Nakano* within the file system of its live server (i.e., its production server). And, the staging area that *Nakano* appears to provide on its development server (which is not on the "live server") is not taught as not defaulting to inclusion in a directory listing of the file system of the development server.

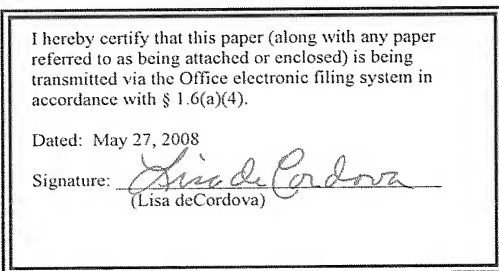
Finally, *Nakano* fails to teach "inserting a randomized string into a name of said file assets to be staged". In asserting that *Nakano* teaches this element of claim 1, the Final Office Action (at page 2 thereof) cites to teaching of *Nakano*, which provides: "Each work area, staging area, and edition area has two unique identifiers, one of which is referred to in this application as a 'generation ID,' and the other of which is referred to as an 'object ID.' ... Each area is also identified by a unique generation ID, which indicates how an area is related to other areas." (Emphasis added). *See* col. 8, lines 18-29 of *Nakano*.

While the above portion of *Nakano* mentions a two identifiers – an object ID and a generation ID – *Nakano* fails to teach inserting any random string into a name of the file assets to be staged. For instance, *Nakano* teaches that the object ID and generation ID are separate fields for an area from the area's name, *see* col. 8, lines 6-10 of *Nakano*. The Advisory Action asserts that the “name of said file assets to be staged” is the generation ID of *Nakano*. Applicant disagrees. *Nakano*'s generation ID does not provide a name of the assets to be staged, but instead indicates how an area is related to other areas. *Nakano* teaches that a separate name field provides a name for a given area, and no teaching whatsoever is provided in *Nakano* that the separate name field includes a randomized string.

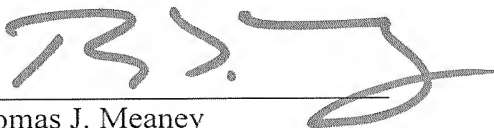
In view of the above, *Nakano* fails to teach all elements of claim 1, and therefore the rejection of claim 1 should be withdrawn. *Nakano* likewise fails to teach all elements of independent claims 8 and 14 for reasons similar to those discussed above for claim 1, as argued more fully in Applicant's response to the Final Office Action filed March 10, 2008. Accordingly, Applicant respectfully requests that the review panel reverse the outstanding rejection of the claims. Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 06-2380, under Order No. M060 from which the undersigned is authorized to draw.

Dated: May 27, 2008

Respectfully submitted,



By


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